

Stephan J. Japuntich
President, Public Defender's Association of Iowa
"Pro Bono Publico"

924 Division Street
Webster City, Iowa 50595
(515) 832-5295
drjsjj@iowatelecom.net

4th Floor, Lucas Building
Des Moines, Iowa 50319
(515)-282-8938
Steve.Japuntich@spd.state.ia.us

February 10, 2009
Chief Justice Marsha Ternus
Associate Supreme Court Justices
Iowa Judicial Building
1111 East Court Avenue
Des Moines, Iowa 50319

Re: Potential Reduction/Elimination of Court Reporters

Dear Chief Justice Ternus and Justices of the Court:

There is a saying, purported to be the translation of an ancient Chinese curse, which states "May you live in interesting times." Whether cursed, or not, most of us are currently living through an interesting time. By this I refer to the rapid and severe economic decline we are currently experiencing. Truly, times have gotten both interesting and difficult.

Bearing this sentiment in mind, it has come to the attention of the members of the Board of Directors and general membership of the Public Defender's Association of Iowa that there are preliminary discussions, to occur shortly, that will address budget saving measures on behalf of the Iowa Judicial Branch. It is our understanding that the reduction or elimination of court reporters is an item to be considered.

The Public Defender's Association of Iowa respectfully requests that the Court reflect long and solemnly before making a decision which could severely impact the dispensation of justice in our state. The employment of court reporters is vital to providing a process for litigants that is both fair and accurate.

Speaking professionally, prior to transferring to the State Appellate Defender's Office I worked as a trial lawyer in both private and governmental capacities. In Webster County, unlike

many other venues, preliminary hearings often take place. We often ordered transcripts from preliminary hearings to be used at later hearings or perhaps at trial. Our preliminary hearings were electronically recorded. The recording was given to a typist or, on some occasions, to a certified court reporter for transcription. The quality of the transcripts from these preliminary hearings was almost always poor. The reason for poor quality of the transcripts was rooted in the fact that there was no contemporaneous transcription of the testimonies being taken. This failure to transcribe contemporaneously resulted in substantial portions of the transcript open to interpretation or just plain unintelligible.

The above-referenced situation will necessarily occur if electronic recording replaces court reporters, despite use of the finest high technology recording equipment, as there is no one present at trial to ask the individual to repeat or clarify what was attested to. We have all seen court reporters stop a proceeding when two individuals are attempting to talk over one another. Court reporters stop the proceedings so that they can accurately transcribe what they are hearing so as to ensure the accuracy of that which has transpired. Someone who has to transcribe a hearing after the fact, regardless of the individual's skill and competency, will simply not be able to recapture the inaudible portions. This failure to transmit the testimonial record in an accurate form will result in injustices to litigants civil and criminal alike.

Additionally, court reporters are many times the individuals who ultimately ensure the proper marking and handling of exhibits. In the course of attempting to accurately transcribe the proceedings, court reporters have a vested interest in making sure that exhibits are not only marked, but marked with the correct identification.

To many citizens, court reporters are the first individuals they interact with when visiting the courthouse. Attorneys and citizens alike may stop in the judge's chambers needing information, and those awaiting hearings will usually approach the court reporter who awaits the entry of the tribunal, requesting information about the proceedings or courthouse information in general. Based upon my own experience, Iowa court reporters are usually friendly, helpful and courteous to those citizens to whom the court reporters represent the legal system.

In considering the transition from live court reporters to an electronic system, it is instructive to investigate the cost and performance data collected by those jurisdictions that have already done so. According to the Ohio Judicial Commission, some of the issues to consider include the following:¹

I. Installation costs:

1. Audio and video files require large amounts of system capacity which necessitates upgrading computerized equipment
2. Public address systems may need to be replaced as well as the necessary wiring and cables.
3. Infrastructure concerns including a determination of whether the existing electrical wiring will support the new system
4. Storage costs including labor to archive, catalogue and physically store CDs or DVDs. Consider also the costs associated with the deletion of files which are no longer needed.
5. Initial training costs for courthouse staff

II. Operating Costs:

1. Ongoing staff training as well as training for newly hired employees
2. Maintenance and service costs
3. Costs associated with operating a backup system.
4. Repair Costs
5. Updating costs: computer technology changes at a fast pace

III. Operation of the Equipment:

1. Space must be allocated to accommodate microphones, cameras, computers and the wiring necessary to run them
2. How difficult will the equipment be to use? Who will have access to or be responsible for the use of the equipment?

Guidelines for Courts Considering a Digital Recording System pp. 2-3 (draft publication)

The Ohio Judicial Commission notes that “The biggest complaint on the quality of the record is inaudible comments-sometimes because no microphone is able to record, sometimes because several sounds are mixed and cannot be separated (a statement and a cough, for example, or a statement and papers being shuffled around close to a microphone).”

¹The following information was taken from the draft publication Guidelines for Courts Considering a Digital Recording System promulgated by the Ohio Judicial Conference Technology Committee in August of 2006.

The question arises as to whether the Iowa Judicial Branch would see significant savings, if any at all, by implementing an electronic system of recording legal proceedings. The bigger, and far more important, question is whether implementation of an electronic recording system would result in injustices being perpetrated in the name of monetary savings. We know that Iowa's court reporter system currently produces highly accurate transcriptions of legal proceedings. Further, we have reason to believe that the accuracy to which we have become accustomed, that which so competently serves the ends of justice, would be greatly compromised by the transition to electronic recording equipment.

In the Chief Justice's state of the judiciary address, she correctly points out that decisions regarding guilt, innocence, property rights, parental rights, legal privileges and power are decisions only government can make. In order to maintain public confidence in the legal system "We must ensure the fundamentals of governing our state, including the administration of justice, are strong, especially in tough times such as these."

As the Chief Justice pointed out to the Senate Budget Subcommittee, many expenditures currently undertaken by government, including the funding of recreational trails, historical exhibits and entertainment venues (to name but a few), are popular with the citizenry, but not as "...fundamental and critical as ensuring civil justice, social order and public safety..."

In closing, admittedly we live in interesting times. There are challenges to be met and sacrifices to be made. However, if justice is sacrificed, all that is retained at its expense will be for nought.

Sincerely,

Stephan J. Japuntich **AT0003910**
President Public Defender's Association of Iowa